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SUPPLEMENTAL UNEMPLOYMENT BENEFITS: PROBLEMS OF THE FORD PLAN

A new issue was introduced in labor-management bargaining during 1955 by the supplemental unemployment benefit plan in the Ford Motor Company-United Automobile Workers contract.¹ Popularly known as the "principle of the guaranteed annual wage,"² its advocates predict that the plan will prevent depressions, bring full employment, raise living standards, and give workers a sense of security never before experienced.³ Critics of this principle are equally outspoken in warning that it will precipitate the downfall of the economy, bringing an end to the free enterprise system.⁴ The Ford Plan has become the basis for over 70 other supplemental unemployment benefit plans negotiated in 1955.⁵ It will probably set the pattern for future collective bargaining.⁶ The importance of the plan warrants its analysis.

1. Supplemental Unemployment Benefit Plan, Exhibit C, Collective Bargaining Agreement between Ford Motor Company and United Automobile Workers, CIO, June 8, 1955. The agreement will be cited hereinafter as Exhibit C. Its provisions will be cited by article and section number, *viz.*, Exhibit C, art. I, § 1. Copies of this and similar agreements can be obtained from the Automobile Manufacturers Association, 320 New Center Building, Detroit, Michigan.

2. It was so designated by United Automobile Workers, CIO President Walter Reuther. *Business Week*, June 11, 1955, p. 152.

3. *Guaranteed Annual Wages*, 14 *ECON. OUTLOOK* 77 (1953).

4. *Business Week*, June 11, 1955, p. 29. See also 101 *CONG. REC.* A5300 (daily ed. July 19, 1955).

5. These plans now cover more than 862,500 workers. The following industries have adopted such plans: Ford Motor Co. (140,000); General Motors Corp. (375,000); Chrysler Corp. (140,000); American Motors Corp. (24,000); Allis-Chalmers Manufacturing Co. (17,500); International Harvester Co. (40,000); Houdaille-Hershey Co. (2,500); Caterpillar Tractor Co. (18,000); Borg-Warner Co. (4 locals) (2,400); John Deere and Co. (12,500); Budd Co. (16,000); Bendix Corp. (17,000); Eaton Manufacturing Co. (4,000); Detroit Tool and Die Ass'n (6,000); Dana Corp. (6,000); White Motor Co. (4,000); Kelsey-Hayes Co. (3,700); Spicer Manufacturing Co. (2,500); Midland Steel Co. (2 locals) (3,800); Detroit Steel Products (2,000); and 50 smaller firms (25,600). 36 *LAB. REL. REP.* 658 (1955).

The Ford Motor Company-United Automobile Workers, CIO plan has become the basis for almost all subsequent plans. For example, the General Motors Corporation plan differs only in that (1) it provides for one trust fund while the Ford contract created two funds, one for defense production employees, the other for civilian production employees, and (2) the two contracts use different methods to arrive at maximum amounts for the funds, but both methods result in the maximum rising and falling proportionately with changes in the level of employment. See Supplement Unemployment Benefit Plan, Exhibit C-1, Collective Bargaining Agreement between General Motors Corporation and United Automobile Workers, CIO, June 12, 1955.

6. See statements to this effect by Walter Reuther, president of United Automobile Workers, CIO, in *Business Week*, June 11, 1955, p. 153, and David J. McDonald, President of the United Steelworkers, CIO, in *Business Week*, April 2, 1955, p. 125.

Guaranteed annual wage plans first appeared on the American industrial scene in 1894 as a means to eliminate overtime pay and prevent periodic labor turnovers in seasonal industries.⁷ A traditional plan guarantees either a minimum number of hours or pay checks per year; in return, the worker relinquishes overtime pay, as sanctioned by Congress.⁸ Several variations of the plan have appeared since 1952.⁹ Most labor unions avoided making wage guarantees a bargaining objective until publication of the *Latimer Report*.¹⁰ This report spurred unions to seek what has become the supplemental unemployment benefit plan.¹¹ The plan does not guarantee an annual wage; it provides simply

7. The National Association of Machine Printers and Color Mixers received an eleven month employment guarantee in 1894 from the National Wall Paper Company. Other pre-1900 plans were negotiated by the National Union of the United Brewery Workmen of the United States, and by the Machine Printers Beneficial Association with a New Jersey textile finisher. BUREAU OF NATIONAL AFFAIRS, *THE GUARANTEED ANNUAL WAGE* 2 (1955).

In all 347 such plans have been adopted in the United States, 196 of which are still operating. *Business Week*, April 9, 1955, p. 82. Of 62 plans chosen by the Department of Labor for study, three-fifths were introduced by management initiative. U.S. BUREAU OF LABOR STATISTICS, DEPT OF LABOR, BULL. NO. 925, *GUARANTEED WAGE PLANS IN THE UNITED STATES* 25 (1947).

8. The Proctor and Gamble plan of 1923 guarantees each worker having 2 years seniority 48 weeks of work per year at the current rate of 40 hours per week, with the provision that overtime work is applied to the guarantee and that the company can move workers from job to job as it deems fit.

The George A. Hormel Company plan, inaugurated in 1931, guarantees its workers 52 paychecks a year, computed at the employee's pay rate times his standard work week. Overtime work up to a total of 53 hours per week is paid at the straight time rate, unless the employee accumulates more than 2,080 hours in one year. The Nunn-Bush Shoe Company plan differs from the Hormel plan in that the amount of each check is not guaranteed, but varies proportionately with the dollar volume of the company's product.

Employees need be paid overtime only for work in excess of 12 hours per day or 56 hours per week if they are covered by a plan which guarantees either 1,840 hours of work per year or 46 weeks of work at the normal number of hours (at least 30) per week. 52 STAT. 1063 (1938), as amended, 29 U.S.C. § 207 (1952).

9. For a complete listing of "traditional" Guaranteed Annual Wage plans, see BUREAU OF NATIONAL AFFAIRS, *op. cit. supra* note 8, at 17-54.

10. OFFICE OF WAR MOBILIZATION AND RECONVERSION OF TEMPORARY CONTROLS, *REPORT TO THE PRESIDENT ON GUARANTEED WAGES* (1947). The report concluded that guaranteed annual wage plans, if widely adopted, safeguarded against excessive cost, and adequately financed, would be beneficial to the economy, and recommended that such plans be integrated with state unemployment compensation.

Unions originally spurned fringe benefit programs as being paternalistic, and during the 1930's argued that employer welfare programs cheated employees out of direct wages to which the employees were entitled. *Business Week*, April 9, 1955, p. 83.

11. The United Steelworkers, CIO had requested a wage guarantee in 1943. Eberling, *The Guaranteed Annual Wage and Unemployment Compensation*, 8 VAND. L. REV. 462 (1955). A specific plan was offered by the steelworkers in their 1953 negotiations with the Aluminum Company of America. Brubaker, *Guaranteed Annual Wage*, 4 LAB. L. J. 387 (1953). In 1954 the steelworkers made a similar proposal to United States Steel Corporation. 34 LAB. REL. REP. 221 (1954).

No plan was obtained by a union however, until the United Automobile Workers,

for more adequate compensation during layoffs than is provided by state unemployment compensation laws.

The Ford Plan

Briefly, the Ford Plan provides for the establishment of a trust fund at the rate of five cents per man hour worked until the fund reaches its maximum amount.¹² Benefits begin in June, 1956 or as soon thereafter as those states in which two-thirds of the guaranteeing company's workers are employed have agreed to allow supplementation of state benefits.¹³ A worker must have been employed one year before he begins to accumulate any of the credit units necessary to obtain benefits, and three years of full work weeks are required to qualify for the maximum 26 weeks of benefits.¹⁴ If there is a break in his seniority, or if he has been continually laid off for 18 months, the employee loses all his credit units. He receives no benefits if the layoff was his fault in any way or was the consequence of a strike or similar action.¹⁵

CIO capitalized on the all-out race for automotive leadership among the "Big Three," and won the Supplemental Unemployment Benefit Plan.

12. The maximum amounts were set at \$55,000,000 for the Ford funds and \$150,000,000 for the General Motors fund, for the month of June 1955. Once the trust fund has reached 100% the companies need pay no more until the fund drops below that amount and then only such sum as will bring the fund up to 100% again, or five cents per hour worked per employee during the previous week, whichever is less. Exhibit C, art. III, § 1, Ford-United Automobile Workers, CIO contract, June 8, 1955. Exhibit C-1, art. III, § 1, General Motors-United Automobile Workers, CIO contract, June 12, 1955.

13. If the required states have not done so by June 1, 1957, payment of benefits will begin on the first pay period commencing after that date. In other words, the earliest starting date for payment of benefits is June 1, 1956, and the latest possible starting date is June 1, 1957. See Exhibit C, art. IV, § 2. If the necessary number of states have not approved of supplementation by June 1, 1957, or if a change occurs thereafter so that two-thirds of the company's employees no longer work in supplementing states, or if the necessary federal rulings are revoked, the company's obligation to contribute to the fund is ended. However, payment of benefits will continue until the fund is exhausted. See Exhibit C, art. X, § 5.

14. See Exhibit C, arts. V and VI of the contract. An employee with less than 10 years seniority (but at least one year) earns .25 credit units for each full work week, *i.e.*, at least 32 hours of pay earned in one week. An employee with 10 years or more seniority earns units at a rate of .50 per full work week. One credit unit entitles a worker to one week of benefits if he makes proper application therefor and the trust fund position is 85% or over. The lower the trust fund position is, the greater the number of credit units canceled for each benefit paid.

15. A slowdown, work stoppage, picketing (whether or not by employees), or any other dispute involving company employees whether at a company plant or elsewhere will cause the employee to be denied benefits.

The employee receives no benefits during the first week of layoff in any calendar year, nor if the layoff was due to war, sabotage, insurrection, or act of God. Exhibit C, art. V, § 2(a).

Other prerequisites to eligibility for benefits are that the worker must have registered at the state employment office and must not have failed to accept suitable employment. Finally, he must not be eligible for, or claiming, any accident, sickness, or disability benefits, whether publicly or privately financed, or a pension or retirement benefit financed at least in part by the employer. Exhibit C, art. V, § 2(b).

The amount of weekly benefits paid an employee is dependent upon the trust fund position at the time he became eligible,¹⁶ the number of weeks of continuous layoff, and whether or not his state permits supplementation of unemployment compensation. For the first four weeks of any continuous layoff in any calendar year a "special benefit"¹⁷ is paid, thereafter only a "regular benefit."¹⁸ The maximum amount payable to an employee from the fund during a week of layoff is \$25. Only in states which allow supplementation will "special" and "regular" benefits be paid.¹⁹ In states where it has not been established that supplementation is permissible, "substitute supplemental benefits" will be paid.²⁰ This is an attempt to give all employees of the same class equal benefits whether they work in a supplementing or non-supplementing state. Due to disparity in the length of waiting periods, the amount, and the duration of unemployment compensation among states, "substitute supplemental benefits" will fail to achieve this equality.

The final implementation of the plan is also contingent upon favorable rulings from two federal agencies, one of which has already been given.²¹ The Department of Labor has ruled that employer contributions to a supplemental unemployment benefit fund need not be reflected in the "regular" or "basic" hourly rate used for computing overtime under the Fair Labor Standards Act or the Walsh-Healy Public Contracts Act.²² Employer contributions meet all the tests prescribed in the Administrator's Interpretive Bulletin on Overtime Compensation and are therefore not classified as pay. A favorable ruling from the Internal Revenue Service is also expected, since a

16. No benefits are paid whenever the trust fund position is below 4%; when it is more than 4 percent but less than 13% the amount of benefits is reduced by 20%, but not to an amount less than \$5. Exhibit C, art. VII, § 1.

17. A special benefit is an amount which, when added to a worker's unemployment compensation for that particular week, will equal 65% of his weekly take-home pay, or \$25, whichever is less. Exhibit C, art. VII, § 2.

18. A regular benefit is an amount which, when added to a worker's unemployment compensation for that week, will equal 60% of his weekly (40 hour) take-home pay, or \$25, whichever is less. Exhibit C, art. VII, § 3.

19. The plan provides for payment of regular benefits after state payments cease until the employee's credit units have been exhausted, whether or not his state allows supplementation. Exhibit C, art. X, § 5(c).

20. No substitute supplemental benefit payments will be made until after June 1, 1957. To be eligible for the substitute supplemental benefits the laid off employee must have received unemployment compensation for two weeks following either the commencement of the layoff or the time he last received substitute supplemental benefits. A substitute supplemental benefit is an amount equal to three times the amount the laid off employee would receive for that week from the company under the supplemental unemployment benefit plan if supplementation were permitted. Exhibit C, art. X, § 5(b).

21. Exhibit C, art. X, §§ 1-3.

22. 36 LAB. REL. REP. 617 (1955).

precedent exists for such action.²³

Although many companies have negotiated plans similar to the basic Ford Plan with but minor variations,²⁴ those adopted by certain glass companies and Allis-Chalmers differ considerably. The glass companies' plan²⁵ entitles each worker to any unexpended balance when his employment is terminated. Payments are not conditioned upon eligibility for state unemployment compensation. The fund may also be used to pay for idleness resulting from prolonged illness and to provide vacation pay. There is no fixed maximum beyond which the employer need not contribute. This method of reducing the hardship of layoffs does not give an employer additional incentive to stabilize employment since the cost to the company is completely predictable and constant. The company is merely banking a part of the worker's pay for him on the premise that he would not save it himself.

The Allis-Chalmers Plan,²⁶ on the other hand, is a Ford-type plan with greater benefits. It provides for benefits of 65 percent of take-home pay for the entire period of layoff,²⁷ and allows a worker to take his accrued benefits in a lump sum upon exhausting his state unemploy-

23. The Bureau of Internal Revenue ruled in 1946 that employer payments to a similar fund were ordinary and necessary business expenses, and that such contributions did not constitute wages subject to withholding at the source, although payments to employees from the fund constituted gross income to the employee in the year received. Rev. Rul. 12261, 1946-1 CUM. BULL. 72. The Labor Management Relations Act, 1947 (Taft-Hartley Act) appears to give congressional approval for employer contributions to trust funds for the purpose of paying unemployment benefits. 61 Stat. 157 (1947), 29 U.S.C. § 186(c) (5) (A) (1952).

24. Variations include extending coverage to office workers and engineering employees, extending the period of coverage beyond 26 weeks, raising the amount of benefits paid both as to percentage of wages and maximum sum, and altering the starting dates from those of the Ford Plan. Chrysler Corporation and International Harvester Company include office workers in their plans; International Harvester Company also includes engineering employees. 36 LAB. REL. REP. 600 (1955). The American Can Company and Continental Can Company negotiated a plan with the United Steelworkers, CIO which provides for 52 weeks of benefits pegged at 65% of the workers' take-home pay, and eliminating the \$25 maximum. Time, Aug. 22, 1955, p. 80. The Allis-Chalmers plan provides for 65% of take-home pay, and increases the maximum to \$33 for a worker with four dependents. 36 LAB. REL. REP. 635 (1955). Under the American Motors contract, contributions to the trust fund do not begin until September 15, 1956, with benefit payments not to begin until September 15, 1957. 36 LAB. REL. REP. 600 (1955).

25. This plan was negotiated by the Pittsburgh Plate Glass Company and the Libbey-Owens-Ford Glass Company with the Glass, Ceramic and Silica Sand Workers Union, CIO. 36 LAB. REL. REP. 615 (1955). The Euclid Division of General Motors Corporation has an "income security plan" almost identical to the glass plan. 36 LAB. REL. REP. 512 (1955). The National Association of Manufacturers has given its support and approval to the glass plan. Louisville Courier-Journal, Nov. 21, 1955, § 1, p. 12, col. 7.

26. This plan is embodied in the contract between Allis-Chalmers Co. and United Automobile Workers, CIO. 36 LAB. REL. REP. 635 (1955).

27. The maximum benefit is increased \$2 per dependent up to four dependents. *Ibid.*

ment compensation or upon his return to work. It also permits the accumulation of one-half credit unit per week worked regardless of seniority.²⁸ In states not permitting supplementation the employee may receive an amount equal to 65 percent of his regular weekly wage or \$25, whichever is less, not merely the difference between 65 percent of his weekly wage and the amount of the state unemployment compensation check he would have received had supplementation been permitted.²⁹ Employers should anticipate pressure for an Allis-Chalmers-type plan whether or not they presently provide unemployment benefits.

Administration of the Plan

The employee initiates action under the Ford Plan by applying to the company for benefits. The company's decision on eligibility and amount of benefits is appealable by the employee to a local committee,³⁰ and from there to the Board of Administration,³¹ whose determination is final. The laid off employee must have complied with the eligibility requirements of the state system, with certain exceptions, before he may apply for supplemental benefits.³² If his state unemployment compensation payments are being protested by the company, supplemental benefits will not be paid to the employee, but an amount equal to his weekly supplemental benefit will be set aside for him and given him if the protest is finally determined in his favor by the state.³³ The plan's appeal procedure may be used only for a denial of company benefits for reasons unconnected with state compensation.

Unlike the plan of the glass companies, the Ford Plan provides that the employee shall have no right or interest in the assets of the fund or any company contribution thereto,³⁴ and any attempted alienation

28. Proportionate credit units are given for short work weeks, and benefits are paid even though the trust fund position is below 4%. *Ibid.*

29. These features prompted the United Automobile Workers, CIO to characterize the Allis-Chalmers Plan as "the best one negotiated so far." *Ibid.*

30. The local committee consists of two company members and two union members. Exhibit C, art. XII, § 5(a).

31. The board contains three company members, three union members, and an impartial chairman appointed by the board, who votes only in case of a tie. Exhibit C, art. XII, § 5(b).

32. Benefits are given if the worker was ineligible for unemployment compensation solely because: (1) that week was the second waiting week under state law, or (2) he did not have, prior to his layoff, a sufficient period of work in employment covered by the state system, or (3) the period of time for which state unemployment compensation is payable had expired, or (4) the state is a non-supplementing state. Exhibit C, art. V, § 2(b)(3).

33. Exhibit C, art. V, § 3(a).

34. Exhibit C, art. XI, § 6.

of benefits is declared void.³⁵ If alienation has been attempted, the board may apply the funds for the benefit of the employee or his family. However, if the employee has met all the eligibility requirements for benefits, and has been laid off, it would seem that he does have a vested right to receive benefits, which could be transferred by assignment. Even though the employee may be breaching his employment contract by assigning his accrued benefits, the assignment would probably be valid and enforceable by the third party, who is not in privity with the employer.³⁶ Whether or not alienation of an accrued benefit is valid and enforceable by the assignee will depend upon the label placed upon such benefits by the state, in those states which hold invalid contract clauses prohibiting alienation of wages,³⁷ but prevent alienation of unemployment benefits.³⁸ The same policy which prohibits alienation of unemployment compensation payments is applicable to supplemental benefits. If alienation is permitted, the purpose of the plan, which is to supply the basic needs for a laid off worker, well may be defeated.

Present Status of State Law

Prerequisite to the execution of the plan is a decision by those states in which two-thirds of the company's workers are employed that receipt of supplemental benefits does not constitute wages or remuneration for services which disqualifies a laid off worker from receiving unemployment compensation.³⁹ Union officials believe the necessary two-thirds has now been reached.⁴⁰ Nine states have approved supplementation, either by court decision, board ruling, or attorney general's opinion.⁴¹

35. Exhibit C, art. XI, § 7.

36. Some states permit the assignment of wages despite a non-assignability clause in a worker's contract. *State Street Furniture Co. v. Armour & Co.*, 345 Ill. 160, 177 N.E. 702 (1931); *Bewick Lumber Co. v. Hall*, 94 Ga. 539, 21 S.E. 154 (1894); *Pond Creek Coal Co. v. Lester*, 171 Ky. 811, 188 S.W. 907 (1916); *Sacks v. Neptune Meter Co.*, 144 Misc. 70, 258 N.Y. Supp. 254 (Sup. Ct., App.T. 1932), *aff'd* 238 App. Div. 82, 263 N.Y. Supp. 462 (1st Dep't 1933). See also *Monarch Discount Co. v. Chesapeake and Ohio R. R.*, 285 Ill. 233, 120 N.E. 742 (1918), for a discussion of the Indiana and Illinois conflict of laws rule on assignment of wages.

37. *State Street Furniture Co. v. Armour & Co.*, 345 Ill. 160, 177 N.E. 702 (1931); *Standard Discount Co. v. Metropolitan Life Ins. Co.*, 321 Ill. App. 220, 53 N.E.2d 27 (1944). *Contra*, *Sargent Glass Co. v. Matthews Land Co.*, 35 Ind. App. 45, 72 N.E. 474 (1905).

38. The Indiana Employment Security Act prohibits any assignment, pledge, or encumbrance of unemployment compensation benefits. IND. ANN. STAT. § 52-1558b (Burns 1951).

39. Exhibit C, art. X, § 5(a) (2).

40. See *Business Week*, Feb. 25, 1956, p. 130 and Feb. 18, 1956, p. 168.

41. See the compilation in CHAMBER OF COMMERCE OF THE UNITED STATES, UNEMPLOYMENT COMPENSATION 1955 and THE OUTLOOK (1955). See also Opinion No. 2213 of Michigan Attorney General Thomas M. Kavanagh, on Ford and General Motors Supple-

In a referendum, the voters of Ohio rejected a proposal to allow supplementation of unemployment compensation, but no board ruling has been made.⁴² Ten states permit a worker to earn a certain minimum sum per week without loss of state benefits.⁴³ Only in Minnesota are state compensation payments definitely barred to anyone who receives "benefit payments from any fund" to which the employer contributes over 50 percent.⁴⁴ The Indiana law, as interpreted by its Supreme Court and Employment Security Board, seems to prohibit supplementation.⁴⁵

There seems to be no sound reason for depriving an employee of unemployment compensation merely because the company saw fit to aid in the accomplishment of the basic purpose of the unemployment compensation law.⁴⁶ The plan was bargained for because state benefits are inadequate to meet the normal needs of a laid off worker.⁴⁷ In view

mental Unemployment Benefit Plans, given July 12, 1955. *Kerr v. Director of Employment*, — Mass. —, 123 N.E.2d 229 (1954).

42. *Business Week*, Nov. 12, 1955, p. 33. The Ohio referendum, however, included both a proposal to permit supplementation and a proposal to raise the maximum unemployment compensation payment to \$59 from the present \$39 and to extend the benefit period from 26 to 39 weeks. Voters were required to decide on the entire "package deal," so that a true opinion on supplementation may therefore not be reflected by the vote results.

43. See the compilation in CHAMBER OF COMMERCE OF THE UNITED STATES, UNEMPLOYMENT COMPENSATION 1955 AND THE OUTLOOK (1955).

44. *Ibid.* The remaining states have either made no rulings, or the rulings on related plans such as pension and vacation plans have been unfavorable.

45. IND. ANN. STAT. § 52-1539 (Burns 1951) provides that (1) an employee cannot receive unemployment compensation if he is receiving unemployment compensation from the federal government or from another state, (2) "back pay" awards of a labor board are wages under the act, (3) "pay for idle time" is deductible from unemployment compensation. See also Note, 22 IND. L.J. 414 (1947). The Indiana Supreme Court has held that the United Mine Workers' pension fund is not merely a plan of the workers to which the operators have agreed, but is the employer's plan. Therefore employees receiving pensions thereunder are ineligible for benefits under unemployment compensation. *Talley v. Review Bd. of Ind. Employment Security Div.*, 119 Ind. App. 680, 88 N.E.2d 157 (1949). Where the employer offers his employees a vacation with pay, an employee cannot get unemployment compensation for the vacation period even though the employee refused to accept that vacation pay which was in excess of unemployment compensation requirements. *American Central Mfg. Corp. v. Review Bd. of Ind. Employment Security Div.*, 119 Ind. App. 430, 88 N.E. 2d 256 (1949). Whether or not Indiana will permit supplementation may be influenced by the decisions of other states.

46. For example, the purpose of the Indiana Employment Security Act is stated in the preface of the statute: "Economic insecurity due to unemployment is declared hereby to be a serious menace to the health, morale, and welfare of the people of this state and to the maintenance of public order within this state. Protection against this great hazard of our economic life can be provided in some measure by the required and systematic accumulation of funds during periods of employment to provide benefits to the unemployed during periods of unemployment and by encouragement of desirable stable employment. The enactment of this measure to provide for payment of benefits to persons unemployed through no fault of their own, to encourage stabilization of employment, and to provide for a state employment service is, therefore, essential to public welfare. . . ." IND. ANN. STAT. § 52-1525 (Burns 1951).

47. The average maximum weekly unemployment compensation payment in the United States is \$30 per week. Under the 1955 amendment, the Indiana maximum is

of their identity of purpose and the absence of any possible conflict in administration, it seems that states should welcome the advent of supplementation plans.

Economic Consequences

Perhaps the greatest obstacle to the adoption of guaranteed wage plans was the fear that their cost would be prohibitive.⁴⁸ No company could guarantee all its employees their regular take-home pay for each week during the year, and even in the most stable industry there exists the possibility of unexpected, long layoffs. The benefits under the Ford Plan, however, are limited in amount and duration, so that their cost is no more prohibitive than a five cent wage increase. Since an employer need pay nothing while the trust fund position is at 100 percent, a supplemental unemployment benefit plan may be more economical than a flat wage increase.⁴⁹ The Ford Plan was adopted in lieu of a larger wage increase, not in addition to it.⁵⁰

A related objection is that, if the employer is unable to shift the increased cost to the consumer through increased prices, profits will be reduced; investment in the company, capital expansion, and capital replacement may be discouraged or terminated altogether.⁵¹ Production may have to be curtailed, resulting in unemployment, which, by becoming widespread, may cause deflation or perhaps even a depression. But this argument is not one peculiar to supplemental unemployment benefit plans; it is applicable to any cost increase. The predicted consequences

\$30 per week, and the Michigan maximum is \$53 per week. CHAMBER OF COMMERCE OF THE UNITED STATES, UNEMPLOYMENT COMPENSATION 1955 AND THE OUTLOOK 2 (1955); Business Week, June 18, 1955, p. 166. The normal take-home pay for a Michigan automobile worker ranges between \$69.32 for a single man to \$80.82 for a worker with four children. Freeman, *The Guaranteed Annual Wage*, Collier's, Sept. 30, 1955, p. 39. President Eisenhower, in his economic report to Congress on January 28, 1954, pointed out that the duration of unemployment compensation benefits was generally too short, and that their size was inadequate. On the latter point he stated that maximum benefit rates had not kept pace with rising wage levels; that they had fallen over the years from an "effective rate" of 43% of weekly wages to 33%. He urged states to raise the benefits "so that the payments to the great majority of the beneficiaries may equal at least half their regular earnings." ECONOMIC REPORT OF THE PRESIDENT, 96-99 (1954). Cf. Hubbard, *Adequacy of Unemployment Compensation Benefits*, 10 AM. ECON. SEC. 42 (1953).

48. Hazard, *Can We Afford A Guaranteed Annual Wage*, Atlantic Monthly, March 1955, p. 52.

49. This opinion is shared by at least one union. American Can Company offered a Ford-type plan to the AFL production workers in its three New Jersey plants. The offer was flatly rejected, the workers demanding a wage increase instead. Time, Oct. 3, 1955, p. 91.

50. Business Week, June 18, 1955, p. 170.

51. Maher, *Can Labor Get A Guaranteed Annual Wage?*, Saturday Evening Post, Dec. 18, 1954, p. 44. Molthrop, *The Guaranteed Wage-Principles and Costs*, 12 AM. ECON. SOC. 24 (1955). Business Week, April 9, 1955, p. 92.

pertain only to a marginal producer. While unemployment may result in a particular company because of reduced consumption of its product due to this cost rise, the increased willingness of workers covered by a supplementation plan to purchase goods on credit will accelerate demand, thereby increasing production of consumer goods generally, which in turn results in greater overall employment. Many factors coalesce to cause unemployment, so even if supplementation were a factor it would not necessarily be the controlling one.

Nor will the Ford Plan bring about full employment.⁵² Even though the plan may induce employers to stabilize operations, some employers, as pointed out above, will be forced to curtail production. Changes in tastes or fashion, new discoveries, and inventions constantly make products obsolete. An individual worker's spending capacity will not be increased by the plan, since benefits are paid only during layoff.

The plan has been criticized on the grounds that accumulation of huge trust funds, as are required under most supplemental unemployment benefit plans, withdraws such funds from distribution during periods of high level employment, thereby reducing consumption and exerting a strong influence toward deflation and unemployment.⁵³ But the trust funds are not idle. They are invested in securities as are other trust funds.

If every major industry guaranteed its employees an annual wage, the impact of a general decline would be postponed by the guarantee, since employers would attempt to keep operating as long as possible to avoid paying benefits. The impact would be disastrous when layoffs can no longer be postponed.⁵⁴ To avoid such drastic consequences the government would have to control production and competition in all industries. While a nationwide guaranteed annual wage might mean a planned economy, the Ford Plan will not necessitate increased governmental regulation of business. The limitations embodied in supplemental unemployment benefit plans assure the continuation of management prerogatives.⁵⁵ Through such measures as Federal Reserve credit controls, public works, deficit financing, subsidization, tariffs, securities controls, and reduction and refunding of taxes, the federal

52. The CIO predicts the plan will bring about full employment. *Guaranteed Annual Wages*, 14 *ECON. OUTLOOK*, 77 (1953). *Business Week*, April 9, 1955, p. 106.

53. Maher, *supra* note 51.

54. CHAMBER OF COMMERCE OF THE UNITED STATES, *THE ECONOMICS OF THE GUARANTEED ANNUAL WAGE* 23 (1953); EBERLING, *THE GUARANTEED ANNUAL WAGE* 23 (1953); Eberling, *The Guaranteed Annual Wage and Unemployment Compensation*, 8 *VAND. L. REV.* 469 (1955).

55. See Exhibit C, art. VIII (limitation on duration of benefits); art. VII (limitation on amount of benefits); art. IV, § 1 (limitation on company liability to trust fund); art. V (limitation on eligibility for benefits); and art. VI (seniority restrictions).

government already has sufficient means to cushion depressions.⁵⁶ Enormous tax and credit powers counter-balance business cycles.⁵⁷ No additional regulation appears necessary.

The most important effect of supplemental unemployment benefits is the feeling of security they give the employee.⁵⁸ In the average state which permits supplementation a laid off worker who is covered by the plan will receive \$55 per week for 26 weeks,⁵⁹ an amount sufficient to meet his basic needs. State unemployment compensation has been grossly inadequate for a long time.⁶⁰ The plan has encouraged the changing of state laws to provide increased benefits to laid off workers.⁶¹ This is further evidence that the purposes of the two systems are compatible, if not identical.

Stabilization of production and elimination of seasonal layoffs may be by-products of supplemental unemployment benefit plans. Industry is already striving to accomplish these things. However, everything possible has not been done to bring about stabilization, as pointed out by the National Association of Manufacturers.⁶² The added incentive

56. Ruttenburg, *Pay By the Year: Can the Unions Afford It?*, Harper's Magazine, Dec. 1955, p. 33.

57. *Ibid.*

58. Philip Murray stated in 1952: "In the minds of workers today there is a deepseated feeling of insecurity. Regardless of the size of his weekly pay envelope or the amount of his hourly earnings, the average worker has a gnawing worry that his job may come to an end. At best he will be able to fall back only on a small amount of savings . . . or upon unemployment compensation, at rates far below any reasonable standard for keeping his family together: or, as a last resort, upon the subsistence hand-outs of the relief agencies." *Guaranteed Wages*, 14 ECON. OUTLOOK 77 (1953).

59. This amount consists of \$25 supplemental benefits plus \$30 unemployment compensation. See note 43 *supra*.

60. See note 47 *supra*.

61. Nineteen states (including Indiana) voted to increase unemployment compensation benefits in 1955. See note 43 *supra*.

62. The NAM suggests the following stabilization methods: (1) Sales techniques: Analysis of cause of sales and sale fluctuations, diversification of search for new products, staggering of introduction of new styles over the year, salesmen incentives in off-seasons, education of consumers in buying habits; (2) Production techniques: Stockpiling of raw materials which can be purchased only seasonally, even if it requires purchase of storage space, building up of inventory during slack seasons, deferring work on standard items or long-term orders until quiet periods, sub-contracting items which interrupt the normal flow of production; (3) Employment techniques: Centralized control of hiring and transfers, training to increase versatility of the individual worker and permit flexibility of work assignment, scheduling of vacations in slow seasons; (4) Management techniques: Assigning responsibility for stabilization to top officers, more emphasis on sales forecasting and production planning, and research for new products. Shaffer, *Guaranteed Annual Wages*, 1 EDITORIAL RESEARCH REPORTS 58 (1953). A Ford executive stated that the auto industry is seasonal only because of manufacturers' advertising and the introduction of new models at the same time by all manufacturers each year. The plan may be a sufficient incentive for employers to stabilize employment. Business Week, April 9, 1955, p. 102.

of a supplemental plan may result in the adoption of measures suggested by the Association.

Serious economic problems could result from attempts to minimize or avoid the impact of the supplementation plan by employers who have adopted it as a result of collective bargaining. An employer may reduce his work force to the average demand level to minimize the risk of paying benefits, even though it means foregoing a portion of his market during peak demand periods.⁶³ Reluctance to experiment with new products may also be a consequence of the fear of paying benefits.⁶⁴ If such a conservative policy were followed on a large scale, it would tend to cause deflation, unemployment, and a static economy.⁶⁵ It is doubtful, however, that an employer's concern for having to replenish the trust fund is an incentive for foregoing capacity production during peak periods if there is an available market for his product. Stockpiling during slack months so that the demand of peak seasons can be more easily met is encouraged by the plans. The gains to be obtained by American ingenuity far outweigh the losses which could be attributed to supplementation plans.

An employer could use the seniority provision of the supplementation contract to avoid paying any benefits by hiring a small core of permanent employees and augmenting them with a temporary labor force.⁶⁶ But the cost of training new workers, the resultant slow down of production due to inexperience on the job, and union pressure makes such a scheme impractical.

It has been asserted that in times of low production, companies will absorb work which suppliers would ordinarily perform in order to avoid paying unemployment benefits.⁶⁷ But a company's decision against vertical integration is based upon considerations of its capital structure, labor market, the availability of and proximity to the source of raw materials, and the economic feasibility of that method of manufacture. To attempt integration for a short period would not be economically practical in the long run. A company could not afford to keep the necessary tools and machinery on hand, standing idle, to be used only during slack periods. To the contrary, the plans may cause a company

63. See *Business Week*, April 9, 1955, p. 98.

64. *Id.* at p. 107.

65. CHAMBER OF COMMERCE OF THE UNITED STATES, *THE ECONOMICS OF THE GUARANTEED ANNUAL WAGE* 25 (1953). See also note 3 *supra*; Maher, *supra* note 57; DAVIS & MATCHETT, *MODERN LABOR ECONOMICS* 621 (1954).

66. *Business Week*, April 9, 1955, p. 98; DAVIS & MATCHETT, *op. cit. supra* note 64, at 622.

67. *Business Week*, April 9, 1955, p. 122. Maher, *supra* note 51.

to sub-contract production of its "accessory" items, thereby shifting the risk of employment to the supplier.⁶⁸

The plan has the potential of causing the laid off worker to lose incentive to look for other employment.⁶⁹ But the assumption that the incentive to look for other employment subsides completely when a worker receives supplemental payments is open to doubt as the amount of the worker's benefit will still be less than his normal take-home pay. The average worker is a family man who wants to save his state wage credits and his company credit units for the unknown future. It is precisely his search for security which makes him seek substitute employment.⁷⁰ These factors also counter the prediction that workers with the most seniority under the plan will demand to be laid off first.⁷¹ The benefits, in their present form, are just not that lucrative.

It is possible that other jobs in the same labor area would not be available, with or without incentive, as other employers will refuse to hire and train temporarily laid off workers. In a mass production industry seasonal layoffs occur at approximately the same time for all companies, so that the geographical area could not possibly provide substitute employment for a majority of the laid off workers.

Unions may use the supplemental unemployment benefit plan as a weapon against employers during collective bargaining negotiations.⁷² Because benefits are withheld only when the company's employees strike, a union may threaten to strike a small but vital supplier of a large producer, thereby forcing the producer to shut down. The union could easily finance a strike in a small shop when it is assured that the majority of its members will be receiving company supplementation benefits. Unless the company can obtain its supplies elsewhere on short notice, it would in effect be financing a strike against itself. The union could thereby carry on a sustained strike without much danger of losing the support of its rank and file members. Limitations in the amount and the duration of benefits under the Ford Plan and employee desire

68. Maher, *supra* note 51. Suppliers to the auto industry hailed the plan believing it would force stabilization and make auto companies go slow in expanding to make components for themselves, and thus give the suppliers more business. *Business Week*, June 11, 1955, p. 29.

69. See CHAMBER OF COMMERCE OF THE UNITED STATES, *Econ. Intelligence*, July 1955, p. 3; *Business Week*, April 9, 1955, pp. 92, 97; Waterman, *Unemployment Benefits and Work Incentives*, 12 AM. ECON. SEC. 38-40 (1955).

70. The CIO lists other work incentives which will keep an employee on the job, such as a regular place on the seniority list, rights to pensions, severance, vacation, and call-in pay. 14 *ECON. OUTLOOK* 80 (1953).

71. See *Business Week*, April 9, 1955, p. 97; Hazard, *Can We Afford a Guaranteed Wage?*, *Atlantic Monthly*, March 1955, p. 52.

72. See *Business Week*, April 9, 1955, p. 97.

to return to work mitigate, to a degree, this new weapon of labor; and it may be questioned whether any large company is so dependent upon one supplier to be affected by the "substitute strike."

Conclusion

The plan accomplishes its prime function of supporting a worker during temporary layoffs. It has also focused attention on the inadequacy of state unemployment compensation laws. Furthermore, the employer is given an additional incentive to stabilize production. No substantial economic burden or change in labor-management bargaining positions results from the adoption of the Ford Plan. The possible dangers discussed above are minimized by limitations embodied in the plan. It is important, therefore, that these limitations be preserved in future negotiations. The employer's liability must be limited to the amount accumulated in the trust fund, else bankruptcy could result. The benefits must not become too lucrative, else the incentive to work is lost. Finally, if the amount is too lucrative and the duration too long, the benefit plan may be misused by unions carrying on a sustained strike against an indispensable supplier. The Allis-Chalmers plan has increased benefits, but has preserved the fundamental concepts of the Ford Plan, and should therefore be acceptable to other companies. But the "substitute strike" loophole of present plans should be eliminated by a more complete "no-strike" clause.